

In the Matter of Merchant Mariner's Document No. 7-300789 and all
Issued to: Elmer Everette Ray

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1169

ELMER EVERETTE RAY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 29 April 1959, an Examiner of the United States Coast Guard at Baltimore, Maryland revoked Appellant's seaman documents upon finding that he is incompetent. The specification found proved alleges that, due to Appellant's mental condition, he is unable to carry out the responsibilities and duties of either licensed or unlicensed seamen on board merchant vessels of the United States.

At the beginning of the hearing on 1 May 1958, Appellant acted as his own counsel. He entered a plea of not guilty to the charge and specification. The hearing was adjourned and did not reconvene until 21 April 1959 due primarily to the inability to obtain the presence of the Appellant. On the latter date, Appellant did not appear, but the hearing was conducted in absentia. The Investigating Officer submitted various documentary exhibits on the basis of which the Examiner concluded that Appellant was guilty as charged and revoked his documents.

OPINION

This case will be remanded in accordance with Appellant's statement, on appeal, that he definitely wants to stand trial. There is some question about the adequacy of notice to Appellant of the continued hearing on 21 April 1959 (but see Commandant's Appeal Decision No. 972). Also, the facts on which the two medical diagnoses of unfitness for sea duty are based are not set forth for consideration by the Examiner although the consular report of Appellant's activities, while serving on a ship in February 1958, tends to support the conclusion that Appellant is not mentally competent to serve as a seaman in any capacity.

This consular report, properly authenticated, affords an adequate basis for an additional specification alleging that Appellant was incompetent in February 1958 and still is incompetent. Appellant would be entitled to attempt to show, by medical examination, that this condition no longer exists. See Commandant's Appeal Decision No. 558.

Proof of either the present or suggested additional specification would be sufficient upon which to revoke Appellant's documents. See Commandant's Appeal Decisions Nos. 1086 and 1160

with respect to the present specification.

Pending the outcome of any further hearing in this matter and possible appeal of the Examiner's decision, possession of Appellant's documents shall be retained in custody of the Coast Guard in accordance with the voluntary deposit agreement executed by Appellant in New York City on 10 April 1958. No temporary documents shall be issued.

ORDER

The order of the Examiner dated at Baltimore, Maryland, on 29 April 1959, is VACATED. The record is REMANDED for further proceedings not inconsistent with this decision.

J.A. HIRSHFIELD
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 24th day of May 1960.